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www.uspto.gov

Thomas Thompson
92-543 Kokole Place
Makakico, HI 96707

MAILED

APR 27 2004

Office of the Director
Group 3600

In re Application of
Thomas Thompson
Application No. 09/396,128
Filed: September 14, 1999
For: HURRICANE-EARTHQUAKE
FRIEZE PLATE

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in response to applicant's renewed petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO), on August 14, 2003 and supplemented on October 19, 2003.

The petition is **DISMISSED**.

A review of the file records reveals that the application was held abandoned for failure to timely file a reply to the letter of Informality Re Payment of Fee mailed November 21, 2002. This letter was mailed in response to the amendment filed November 4, 2002.

Applicant argued in the previous petition that a response to the June 26, 2002 Office action was mailed on October 26, 2002 and lost by the Office. A further review of the file records reveals that that response was received on November 4, 2002 and that applicant has a certificate of mail dated October 26, 2002 attached to the response. However, the response was not entered since it was held applicant failed to remit the \$114 fee required for the eight claims in excess of the twenty previously paid for and for the fourth independent claim. A Notice to that effect was mailed on November 21, 2002 wherein applicant was given the remainder of the set period for response, or one month from the date of the Notice, whichever is longer, within which to remit the fee.

A review of the record reveals that a response was received on February 5, 2003. Since the period for response expired December 23, 2002, this response was held untimely. The application was held abandoned and a Notice to that effect was mailed on March 12, 2003.

The supplemental petition filed October 19, 2003 alleges that a response to the Fees Due letter was transmitted to the Office by facsimile on December 26, 2002. However, the copy of the response provided cannot be used as evidence of timely filing since the document is unsigned. Furthermore, the response did not include the appropriate fee to extend the response period to December 26, 2002. Thus, the application was properly held abandoned.

SUMMARY: The petition to withdraw the holding of abandonment is **DISMISSED**.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,330. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail: Deputy Commissioner of Patent Examination Policy
Box 1450
Alexandria, VA 22313-1450

By Fax: (703) 308-6916
Attn: Office of Petitions

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.



Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/mjz: 4/12/04